

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DURHAM, NORTH CAROLINA,
APPROVING AN AMENDMENT TO THE INSTALLMENT PURCHASE CONTRACT WITH
NEW DURHAM CORPORATION AND RELATED MATTERS**

WHEREAS, the City of Durham, North Carolina (the “City”) is a validly existing municipal corporation of the State of North Carolina, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the “State”);

WHEREAS, the City has the power, pursuant to the General Statutes of North Carolina to (1) purchase real and personal property, (2) enter into installment purchase contracts to finance the purchase of real and personal property used, or to be used, for public purposes, and (3) grant a security interest in some or all of the property purchased to secure repayment of the purchase price;

WHEREAS, the City Council of the City of Durham, North Carolina (the “City Council”), previously determined that it was in the best interest of the City to enter into (a) an installment purchase contract with New Durham Corporation, a North Carolina nonprofit corporation (the “Corporation”), in order to pay the capital costs of financing the construction and equipping of a performing arts facility (the “Performing Arts Facility”) and the acquisition of certain equipment (collectively, the “2007 Project”) and (b) a deed of trust and security agreement (the “2007 Deed of Trust”) related to the City’s fee simple interest in the Performing Arts Facility Site and certain ancillary property (collectively, the “2007 Sites”) and the improvements thereon;

WHEREAS, the City entered into an Installment Purchase Contract dated as of January 1, 2007 between the City and the Corporation with respect to the 2007 Project (the “2007 Contract”) after holding a public hearing thereon on October 2, 2006;

WHEREAS, the City Council has determined that it would be in the best interest of the City to enter into an amendment to the 2007 Contract (the “First Contract Amendment” and collectively with the 2007 Contract, the “Contract”) between the City and Corporation in order to pay the costs of (1) refinancing some or all of the portion of the principal components of the City’s installment payments under the 2007 Contract related to the Performance Arts Facility and (2) expenses related thereto;

WHEREAS, the Corporation will execute and deliver Taxable Refunding Limited Obligation Bonds, Series 2015, Evidencing Proportionate Undivided Interests in Rights to Receive Certain Revenues Pursuant to the Contract (the “2015 LOBs”) to Robert W. Baird & Co., PNC Capital Markets LLC and Blaylock Beal Van, LLC (collectively, the “Underwriters”) in order to obtain the funds to allow for the refinancing described in the paragraph above;

WHEREAS, there has been described to the City Council the following documents (collectively, the “Instruments”), copies of which have been made available to the City Council, which the City proposes to approve, enter into and deliver, as applicable, to effectuate the proposed installment purchase financing described in the First Contract Amendment:

- (1) the form of the First Contract Amendment;
- (2) the form of the Letter of Representations to the Underwriters;

WHEREAS, to make an offering and sale of the 2015 LOBs, there will be prepared a Preliminary Official Statement (the “Preliminary Official Statement”), a draft thereof having been presented to the City Council, and a final Official Statement (the “Final Official Statement” and, collectively with the

Preliminary Official Statement, the “*Official Statement*”) with respect to the 2015 LOBs, which Official Statement will contain certain information regarding the City;

WHEREAS, it appears that each of the Instruments and the Preliminary Official Statement is in an appropriate form and is an appropriate instrument for the purposes intended;

WHEREAS, Parker Poe Adams & Bernstein LLP and The Banks Law Firm, P.A., as co-bond counsel (“*Co-Bond Counsel*”), will render an opinion to the effect that entering into the First Contract Amendment and the transactions contemplated thereby are authorized by law;

WHEREAS, no deficiency judgment may be rendered against the City in any action for its breach of the Contract, and the taxing power of the City is not and may not be pledged in any way directly or indirectly or contingently to secure any moneys due under the Contract;

WHEREAS, the City is not in default under any of its debt service obligations;

WHEREAS, the City’s budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act;

WHEREAS, past audit reports of the City indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with the law, and the City has not been censured by the North Carolina Local Government Commission (the “*LGC*”), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies; and

WHEREAS, the City has filed an application to the LGC for approval of the First Contract Amendment;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DURHAM, NORTH CAROLINA, as follows:

Section 1. Ratification of Instruments. That all actions of the City, the City Manager, the City Finance Director, the City Clerk, the City Attorney and their respective designees, whether previously or hereinafter taken, in effectuating the proposed financing are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Instruments.

Section 2. Authorization to Execute the First Contract Amendment. That the City approves the terms of the First Contract Amendment, which will be a valid, legal and binding obligation of the City in accordance with its terms. The form and content of the First Contract Amendment are in all respects authorized, approved and confirmed, and the City Manager and the City Clerk and their respective designees shall be and they hereby are authorized, empowered and directed to execute and deliver the First Contract Amendment, including necessary counterparts, in substantially the form and content presented to the City Council, but with such changes, modifications, additions or deletions therein as to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions or deletions therein from the form and content of the First Contract Amendment presented to the City Council, and that from and after the execution and delivery of the First Contract Amendment, the City Manager, the Finance Director and the City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the First Contract Amendment as executed.

Section 3. Letter of Representations. That the form and content of the Letter of Representations are in all respects approved and confirmed, and the City Manager and his designee be

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and they hereby are authorized, empowered and directed to execute and deliver the Letter of Representations for and on behalf of the City, including necessary counterparts, in substantially the form and content presented to the City Council, but with such changes, modifications, additions or deletions therein as shall to him seem necessary, desirable or appropriate, his execution thereof to constitute conclusive evidence of his approval of any and all changes, modifications, additions or deletions therein from the form and content of the Letter of Representations presented to the City Council, and that from and after the execution and delivery of the Letters of Representations, the City Manager is hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Letters of Representation as executed.

*Section 4. **Application to LGC.*** That the action of the Finance Director or his designee in filing with the LGC an application for its approval of the First Contract Amendment and all relevant transactions contemplated thereby on a form prescribed by the LGC and stating in such application such facts and attaching thereto such exhibits regarding the City and its financial condition as required by the LGC is ratified.

*Section 5. **Direction to Retain Professionals.*** That the City Manager or the Finance Director, with advice from the City Attorney, are hereby authorized and directed to retain the assistance of Parker Poe Adams & Bernstein LLP, Raleigh, North Carolina, and The Banks Law Firm, P.A., Research Triangle Park, North Carolina, as co-bond counsel, the City Manager or the Finance Director are authorized to retain DEC Associates, Inc., Charlotte, North Carolina, as financial advisor; and the Corporation's use of the Underwriters and Moore & Van Allen, PLLC, as counsel to the Underwriters is approved.

*Section 6. **City Representative.*** That the City Manager and Finance Director of the City are hereby designated as the City's Representatives to act on behalf of the City in connection with the transaction contemplated by the Instruments, and the City's Representatives are authorized to seek opinions as a matter of law from the City Attorney, which the City Attorney is hereby authorized to furnish on behalf of the City, and opinions of law from such other attorneys for all documents contemplated hereby as required by law. The City Manager, the City Clerk and the Finance Director of the City or their respective designees are hereby authorized, empowered and directed to do any and all other acts and to execute any and all other documents, which they, in their discretion, deem necessary and appropriate to consummate the transactions contemplated by the Instruments or as they deem necessary or appropriate to implement and carry out the intent and purposes of this Resolution.

*Section 7. **Severability.*** That if any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

*Section 8. **Repealer.*** That all motions, orders, resolutions and parts thereof, in conflict herewith are hereby repealed.

*Section 9. **Effective Date.*** That this Resolution is effective on the date of its adoption.